



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2013-0811]

RIN 1625-AA00

Safety Zone; Patapsco River, Northwest and Inner Harbors;

Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone upon certain waters of the Patapsco River, Northwest Harbor and Inner Harbor during the movement of the historic sloop-of-war USS CONSTELLATION on September 26, 2013. If necessary, due to inclement weather, the event will be rescheduled for October 3, 2013. This action is necessary to provide for the safety of life on navigable waters during the tow of the vessel from its berth at the Inner Harbor in Baltimore, Maryland, to a point on the Patapsco River near the Fort McHenry National Monument and Historic Shrine in Baltimore, Maryland, and its return. This action will restrict vessel traffic in portions of the Patapsco River, Northwest Harbor, and Inner Harbor during the event.

DATES: This rule is effective from September 26, 2013 through October 3, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2013-0811]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Ronald Houck, U.S. Coast Guard Sector Baltimore, MD; telephone 410-576-2674, e-mail Ronald.L.Houck@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

This rule involves the USS CONSTELLATION "turn-around" cruise, an event that takes place in Baltimore, Maryland. A permanent safety zone for this rule, with an enforcement period from 2 p.m. through 7 p.m. local time annually on the Thursday

before Memorial Day, has been published and is detailed at Title 33 Code of Federal Regulations, Section 165.512. However, due to a change in scheduling, the event this year is planned for September 26, 2013. If necessary, due to inclement weather, the event will be rescheduled for October 3, 2013. The event is scheduled to start at 9 a.m. and the event location remains unchanged.

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule due to the short time period between event planners notifying the Coast Guard of details concerning the event, on August 23, 2013, and publication of this safety zone. As such, it is impracticable to provide a full comment period due to lack of time. Furthermore, delaying the effective date of this safety zone would be contrary to the public interest given the high risk of injury and damage during a movement of a historic sloop-of war being towed in confined waters during the boating season in Baltimore, Maryland.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property and the environment; therefore, a 30-day notice is impracticable. Delaying the effective date would be contrary to the safety zone's intended objectives of protecting persons and vessels, and enhancing public and maritime safety.

B. Basis and Purpose

Historic Ships in Baltimore is planning to conduct its "turn-around" ceremony involving the sloop-of-war USS CONSTELLATION in Baltimore, Maryland on September 26, 2013. Planned events include a three-hour, round-trip tow of the USS CONSTELLATION in the Port of Baltimore, consisting of an onboard salute with navy pattern cannon while the historic vessel is positioned off the Fort McHenry National Monument and Historic Site. Beginning at 9 a.m., the historic Sloop-of-War USS CONSTELLATION will be towed "dead ship," which means that the vessel will be underway without the benefit of mechanical or sail propulsion. The return dead ship tow of the USS CONSTELLATION to its berth in the Inner Harbor is expected to occur immediately upon execution of a tug-assisted "turn-around" of the USS CONSTELLATION on the Patapsco River near Fort McHenry. The Coast Guard anticipates a large recreational boating fleet during this

event, scheduled in Baltimore, Maryland. Operators should expect significant vessel congestion along the planned route. In the event of inclement weather, the "turn-around" will be rescheduled for October 3, 2013.

To address safety concerns during the event, the Captain of the Port Baltimore will establish a safety zone upon certain waters of the Patapsco River, Northwest Harbor and Inner Harbor. The safety zone will help the Coast Guard provide a clear transit route for the participating vessels, and provide a safety buffer around the participating vessels while they are in transit. Due to the need to promote maritime safety and protect participants and the boating public in the Port of Baltimore immediately prior to, during, and after the scheduled event, a safety zone is prudent.

C. Discussion of the Final Rule

Through this regulation, the Coast Guard will establish a safety zone. The safety zone will be in effect from 8 a.m. until 1 p.m. on September 26, 2013, and, if necessary due to inclement weather, from 8 a.m. until 1 p.m. on October 3, 2013. The safety zone will include all navigable waters within 200 yards ahead of and 100 yards outboard or aft of the historic Sloop-of-War USS CONSTELLATION while operating in the Inner Harbor, the Northwest Harbor and the Patapsco River. This location is entirely within the Area of Responsibility of the Captain of the Port Baltimore, as set forth at 33 CFR 3.25-15.

This rule requires any unauthorized persons in the regulated area at the time this safety zone is in effect to immediately proceed out of the zone. Except for USS CONSTELLATION "turn-around" participants, and vessels at berth, mooring, or at anchor, this rule temporarily requires all vessels in the designated safety zone as defined by this rule to immediately depart the safety zone. Entry into this safety zone is prohibited, unless specifically authorized by the Captain of the Port Baltimore. U.S. Coast Guard personnel will be provided to prevent the movement of unauthorized persons into the zone. Federal, state, and local agencies may assist the Coast Guard in the enforcement of this rule. The Coast Guard will issue Notices to Mariners to further publicize the safety zone and notify the public of changes in the status of the zone. Such notices will continue until the event is complete.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3)

of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Although this safety zone restricts vessel traffic through the affected area, the effect of this regulation will not be significant due to the limited size and duration that the regulated area will be in effect. In addition, notifications will be made to the maritime community via marine information broadcasts so mariners may adjust their plans accordingly.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate or transit through or within the safety zone during the enforcement period. The safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone is of limited size and duration. Smaller vessels not

constrained by their draft, which are more likely to be small entities, may transit around the safety zone. Maritime advisories will be widely available to the maritime community before the effective period.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any

one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of

power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a temporary safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165-- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add temporary § 165.T05-0811 to read as follows:

§ 165.T05-0811 Safety Zone; Patapsco River, Northwest and Inner Harbors; Baltimore, MD.

(a) Regulated area. The following location is a safety zone: all waters within 200 yards ahead of and 100 yards outboard or aft of the historic Sloop-of-War USS CONSTELLATION while operating in the Inner Harbor, the Northwest Harbor and the Patapsco River.

(b) Definitions. As used in this section:

(1) "Captain of the Port Baltimore" means the Commander, U.S. Coast Guard Sector Baltimore, Maryland.

(2) "Designated representative" means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Baltimore to assist in enforcing the

safety zone described in paragraph (a) of this section.

(3) "USS CONSTELLATION "turn-around" participants" means the USS CONSTELLATION, its support craft and the accompanying towing vessels.

(c) Regulations. The general safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this temporary section, § 165.T05-0811.

(1) All persons are required to comply with the general regulations governing safety zones found in 33 CFR 165.23.

(2) With the exception of USS CONSTELLATION "turn-around" participants, entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. Vessels already at berth, mooring, or anchor at the time the safety zone is implemented do not have to depart the safety zone. All vessels underway within this safety zone at the time it is implemented are to depart the zone.

(3) Persons desiring to transit the area of the safety zone must first request authorization from the Captain of the Port Baltimore or his designated representative. To seek permission to transit the area, the Captain of the Port Baltimore and his designated representatives can be contacted at telephone number 410-576-2693 or on Marine Band Radio, VHF-FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio, VHF-FM channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel, or other Federal,

State, or local agency vessel, by siren, radio, flashing lights, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Baltimore or his designated representative and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(4) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(d) Enforcement period. This section will be enforced from 8 a.m. through 1 p.m. on September 26, 2013, and, if necessary due to inclement weather, from 8 p.m. through 1 p.m. on October 3, 2013.

Dated: August 30, 2013

Kevin C. Kiefer
Captain, U.S. Coast Guard
Captain of the Port Baltimore.

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